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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4757 of 1986

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

KOLI RAMA RUGNATH

Versus

THE MAMLATDAR & AGRICULTURE

Appearance:

1. Special Civil Application No. 4757 of 1986
MR BN PATEL for Petitioner No. 1
MR HD DAVE, AGP for Respondent No. 1-2
RULE SERVED for Respondent No. 3-5

CORAM : HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 30/12/2004

CAV JUDGEMENT

#. In this petition filed under Article 226/227 of the

Constitution of India, the petitioner has prayed for appropriate writ, order and direction quashing and setting aside the order passed by the Gujarat Revenue Tribunal in Revision Application No.TEN/B.A.542/82 dated 6.7.1983 whereby the Gujarat Revenue Tribunal rejected the revision application filed by the petitioner and confirmed the orders passed by the authorities below.

#. It appears from the record of the case that the petitioner has filled in Form No.2 prescribed under the Gujarat Agricultural Lands Ceiling Act, 1960 ("the Act" for short). It also appears that the Mamlatdar and ALT after giving notice and after holding the inquiry passed the order dated 15.3.1977 by which it is held that the applicant is holding 67 acres, 4 gunthas of land in village Patal Darbari of Tharad Taluka of Banaskantha District and, therefore, the petitioner is in possession of 13 acres, 4 gunthas of land in excess of the ceiling limit, and, therefore, the Mamlatdar passed the order to vest the excess land in the State under Section 21 of the Act. Against the said order dated 15.3.1977, the petitioner preferred the appeal, being Ceiling Appeal No.17 of 1980 before the Deputy Collector, Tharad who by his judgment and order dated 18.8.1980 dismissed the appeal. Being aggrieved by and dissatisfied with the said order dated 18.8.1980, the petitioner preferred the revision application, being Revision Application No.TEN.BA.542 of 1982 before the Gujarat Revenue Tribunal. The Gujarat Revenue Tribunal by its judgment and order dated 6.7.1983 dismissed the revision application filed by the petitioner, and, hence, the present petition is filed under Article 226/227 of the Constitution of India.

#. It is contended by Mr.Patel, learned advocate appearing for the petitioner, has submitted that the Gujarat Revenue Tribunal has not properly appreciated the provisions of Section 21 of the Act, and, therefore, erred in arriving at the conclusion that the communication of the operative part of the order at Annexure-A to the petition was communication as required by Section 21 of the Act and the limitation would run against the petitioner from that day. In his submission, communication of operative part only made by respondent No.1 is no communication as required by Section 21 of the Act, and, therefore, no limitation would run against the petitioner by that communication. He submitted that the petitioner's son Mr.Gemara was major on 1.4.1976, and, therefore, the petitioner was entitled to separate unit as per the provisions of Section 6(3C) of the Act. He submitted that this strongest contention based on

material on record is not at all considered by the Tribunal. He submitted that the Mamlatdar and ALT overlooked the material on record and recorded perverse finding and held that the petitioner is holding surplus land, and, therefore, requested to allow this petition.

#. On the other-hand, Mr.H.D.Dave, learned AGP, has tried to support the orders passed by the courts below. He submitted that the Mamlatdar and ALT after holding due inquiry passed the order holding that the petitioner is holding surplus land. He submitted that the appeal against the order passed by the Mamlatdar is preferred belatedly which was dismissed by the Deputy Collector and that the said order passed by the Deputy Collector is also confirmed by the Gujarat Revenue Tribunal in revision application, and, therefore, requested to reject the present special civil application.

#. Heard the learned advocates for the parties.

#. The law on the question of the scope and ambit of the jurisdiction of this Court in the context of the powers which this Court may exercise under Article 227 of the Constitution of India is already settled by the Supreme Court. In the case of Surya Dev Rai Vs. Ram Chander Rai, reported in (2003) 6 SCC 675, the Supreme Court has observed that while examining a petition under Article 227 of the Constitution of India, a writ of certiorari or the exercise of supervisory jurisdiction is not available to correct mere errors of fact or of law unless the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law and a grave injustice or gross failure of justice has occasioned thereby. The Supreme Court further observed as under :

"The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdiction is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari and supervisory jurisdiction

of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis."

The aforesaid principles have been reiterated by the Supreme Court in the case of Yashwant Sakhalkar Vs. Hirabat Kamat Mhamai, reported in (2004)6 SCC 71, and in the case of Ranjeet Singh Vs. Ravi Prakash reported in AIR 2004 SC 3892.

#. Even otherwise, it can be seen from the record of the case that it is admitted by the petitioner on 8.3.1977 before the Mamlatdar and ALT (Ceiling), Tharad-2 that his son i.e. Gemra Rama was aged about 16 years. It appears from the record that the Mamlatdar and ALT after considering the evidence on record and after holding the inquiry, held that the petitioner is holding surplus land admeasuring 13 acres, 4 gunthas on the appointed date i.e. on 1.4.1976 since as on 1.4.1976 the petitioner was holding 67 acres, 04 gunthas of land.

#. It is also required to be noted that even the appeal preferred by the petitioner before the Deputy Collector was time barred and rightly the Deputy Collector has dismissed the appeal on the ground of limitation which was confirmed by the Gujarat Revenue Tribunal.

#. In view of the aforesaid discussion, I am of the considered opinion that no illegality either of facts or law has been committed by the courts below. Hence, I do not find any substance in this petition. Accordingly, this petition is rejected. Rule is discharged. Interim relief granted earlier stands vacated forthwith.

(Sharad D.Dave,J)
srilatha